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Smart Balance, Inc.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

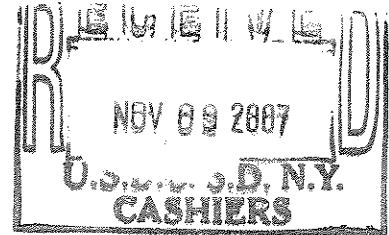
SMART BALANCE, INC. f/k/a Boulder
Specialty Brands, Inc., a Delaware corporation,

Plaintiff

v.

**GLENHILL CAPITAL OVERSEAS
MASTER FUND, LP**, a foreign limited
partnership; **GLENHILL CAPITAL, LP**; a
Delaware limited partnership; **GLENHILL
CAPITAL OVERSEAS GP, LTD.**, a foreign
company; **GLENHILL CAPITAL
MANAGEMENT LLC**, a Delaware limited
liability company; **GLENHILL ADVISORS
LLC**, a Delaware limited liability company;
GLENN J. KREVLIN, an individual,

Defendants.



JUDGE McMAHON
07 CIV 9916

07 Civ

CM-ECFcase

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Smart Balance, Inc. (“Smart Balance” or “SMBL”) by and through its undersigned counsel, as and for its Complaint against Defendants Glenhill Capital Overseas Master Fund LP, Glenhill Capital LP, Glenhill Capital Overseas GP, Ltd., Glenhill Capital Management LLC, Glenhill Advisors LLC, and Glenn J. Krevlin (collectively, “Defendants”), states as follows:

The Parties

1. Plaintiff Smart Balance, Inc. is a Delaware corporation with its principal place of business at 115 West Century Road - Suite 260, Paramus, New Jersey 07652-1432.

2. Defendant Glenhill Capital Overseas Master Fund, LP is a Cayman Islands registered entity with its principal place of business at 598 Madison Avenue, 12th Floor, New York, N.Y. 10022. At all material times, including but not limited to before, on and after May 21, 2007 and September 7, 2007, Defendant Glenhill Capital Overseas Master Fund, LP (“Glenhill Overseas Fund”) was a beneficial owner of 10% or more of the issued and outstanding common stock of Smart Balance.

3. Defendant Glenhill Capital Overseas GP, Ltd. is a Cayman Islands registered entity with its principal place of business at 598 Madison Avenue, 12th Floor, New York, N.Y. 10022. At all material times, including but not limited to before, on and after May 21, 2007 and September 7, 2007, Defendant Glenhill Capital Overseas GP, Ltd. (“Overseas Fund GP”) was the general partner of Glenhill Overseas Fund.

4. Defendant Glenhill Capital LP is a Delaware limited partnership with its principal place of business at 598 Madison Avenue, 12th Floor, New York, N.Y. 10022. At all material times, including but not limited to before, on and after May 21, 2007 and September 7, 2007,

Defendant Glenhill Capital LP (“Glenhill Capital”) was a beneficial owner of 10% or more of the issued and outstanding common stock of Smart Balance.

5. Defendant Glenhill Capital Management LLC is a Delaware limited liability company with its principal place of business at 598 Madison Avenue, 12th Floor, New York, N.Y. 10022. At all material times, including but not limited to before, on and after May 21, 2007 and September 7, 2007, Defendant Glenhill Capital Management, LLC (“Capital Management”) was the general partner and investment advisor of Glenhill Capital.

6. Defendant Glenhill Advisors LLC is a Delaware limited liability company with its principal place of business at 598 Madison Avenue, 12th Floor, New York, N.Y. 10022. At all material times, including but not limited to before, on and after May 21, 2007 and September 7, 2007, Defendant Glenhill Advisors, LLC (“Glenhill Advisors”) was the managing member of Capital Management.

7. Defendant Glenn J. Krevlin (“Krevlin”) is an individual. At all material times, including but not limited to before, on and after May 21, 2007 and September 7, 2007, Krevlin was the managing member and control person of Glenhill Advisors.

Jurisdiction and Venue

8. This action is brought pursuant to § 16(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), 15 U.S.C. § 78p (“16(b)” or “Section 16(b)”), to obtain disgorgement of profits obtained by defendants in violation of that statute.

9. Jurisdiction of this Court and venue in this district are proper pursuant to 15 U.S.C. § 78aa.

Background Facts

10. Section 16(b) of the Exchange Act provides that, if a person, while beneficially owning more than 10 percent of a class of equity securities of an issuer, purchases and sells or sells and purchases shares of any equity security of such issuer within a period of less than six months, any profits arising from those transactions are recoverable by the issuer or by a shareholder suing derivatively on its behalf.

11. Under SEC Rule 16a-1(a)(1) promulgated under the Exchange Act, where two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding or disposing of securities of an issuer as set forth in § 13(d) of the Exchange Act, such persons are deemed to be a “group” for purposes of determining § 16(b) liability. Under SEC Rule 16a-1, the shares held by persons in such a group are aggregated to determine whether the group has a greater than 10% beneficial ownership in the issuing corporation. If the aggregate number of shares beneficially owned by the group exceeds 10%, each member of the group is deemed to be a greater than 10% beneficial owner and is liable to disgorge profits which such group member earned in stock transactions effected within a six-month period.

12. Defendants Glenhill Overseas Fund, Glenhill Capital, Overseas Fund GP, Capital Management, Glenhill Advisors, and Krevlin, (collectively, the “Group Members” or “Group”) constitute a group under §§ 13(d)(3) and 16(b) of the Exchange Act as they have agreed to act, and have actually acted, as a group for the purpose of acquiring, holding, or disposing of the equity securities of Smart Balance. The Group Members garnered short-swing profits disgorgeable to the Company in the transactions hereinafter set forth.

13. The Group Members, both collectively and individually, had both a direct and indirect pecuniary interest in certain equity securities of Smart Balance at all material times, including but not limited to before, on and after May 21, 2007 and September 7, 2007.

14. On May 21, 2007, Glenhill Overseas Fund acquired by purchase 240,281 shares of SMBL Common Stock and 199,167 shares of SMBL Preferred Stock. This acquisition was reflected in a Form 4 filing by the Group Members on May 24, 2007.

15. On May 21, 2007, Glenhill Capital acquired by purchase 429,960 shares of SMBL Common Stock and 356,389 shares of SMBL Preferred Stock. This acquisition was reflected in a Form 4 filing by the Group Members on May 24, 2007.

16. On May 21, 2007, Glenhill Overseas Fund and Glenhill Capital paid \$7.46 per share for each share of SMBL Common Stock purchased.

17. The SMBL Preferred Stock purchased by Glenhill Overseas Fund and Glenhill Capital on May 21, 2007 was convertible at any time, at the option of the holder, into the number of shares of SMBL Common Stock arrived at by dividing \$9.00 per share (which was the initial conversion price) into the per share liquidation preference of \$9.00 per share, plus accrued but unpaid dividends. Thus, as of May 21, 2007, the Preferred Stock of SMBL was convertible into the Common Stock of SMBL on a one-for-one basis.

18. Prior to the May 21, 2007 transactions, the Group Members were beneficial owners of more than 10% of Smart Balance's issued and outstanding common stock.

19. On May 21, 2007, SMBL's Common Stock was publicly traded on the OTC Bulletin Board. On that date, SMBL's Common Stock opened at \$10.05 per share, traded at a high of \$10.14 per share, a low of \$9.20 per share and closed at \$9.85 per share on a total volume of 132,100 shares.

20. On September 7, 2007, less than six months after the May 21, 2007 purchase, Glenhill Overseas Fund and Glenhill Capital sold 1,100,00 shares of SMBL Common Stock on the Nasdaq Global Market. 1,000,000 of the shares were sold for \$10.65 and 100,000 were sold for \$10.6505. Of the 1,100,000 shares sold, Glenhill Overseas Fund sold 420,419 and Glenhill Capital sold 679,581. These transactions were reflected in a Form 4 filing by the Group Members on September 11, 2007.

21. After completion of the September 7, 2007 sales transactions, the Group Members continued to be beneficial owners of more than 10% of Smart Balance's issued and outstanding common stock.

22. All conditions precedent to Plaintiff's right to recover have been performed, waived, or otherwise satisfied.

FIRST CLAIM FOR RELIEF
(Short Swing Profits)

23. Plaintiff re-alleges paragraphs 1 through 22.

24. Defendants profited to the extent of their individual pecuniary interest, both direct and indirect, from the short swing purchase and sale reflected in the May 21, 2007 purchase and the September 7, 2007 sale.

25. Collectively, the Group Members realized, at a minimum \$2,481,925.99 in disgorgeable profits from the short swing purchase and sale. The Group Members are individually liable to the extent of their individual pecuniary interest in the Smart Balance securities at issue.

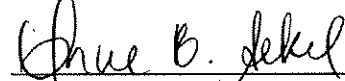
26. Smart Balance demands a trial by jury on all issues so triable.

WHEREFORE, Plaintiff Smart Balance, Inc. demands judgment of and from Defendants Glenhill Capital Overseas Master Fund LP, Glenhill Capital LP, Glenhill Capital

Overseas GP, Ltd., Glenhill Capital Management LLC, Glenhill Advisors LLC, and Glenn J. Krevlin, severally, all disgorgeable profits, prejudgment interest, costs, and such other and further relief as the Court deems just and proper.

Dated: November 8, 2007
New York, New York

FOLEY & LARDNER LLP



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